IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.MC.No. 1605 of 2007()

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AGAINST THE JUDGEMENT/ORDER IN WPC.22682/2006
CP.47/2007 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

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PETITIONER: 2ND ACCUSED

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K.S.PRASAD, AGED 39 YEARS,
S/O.SANKARA PILLAI, TEKKUMKUTTATHIL VEEDU,
NJARAKKAD, TALAVOOR P.O., KOLLAM.

BY ADV. SRI.R.ARUN RAJ

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, SUB INSPECTOR OF
POLICE, KUNNIKODE POLICE STATION (CRIME NO.302/05)
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.1605 of 2007**

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Dated this the 23rd day of May, 2007

**ORDER**

The petitioner is the accused in C.P.No.47 of 2007 and he faces allegations under the provision of the Kerala Abkari Act. Investigation is complete. Final report has already been filed. The committal court has taken cognizance. The petitioner has been summoned. The petitioner is willing to surrender before the learned Magistrate, but apprehends that his application for bail may not be considered by the learned Magistrate on merits, expeditiously and in accordance with law.

2. I find absolutely no merit in the apprehension aired by the learned counsel for the petitioner. It is for the petitioner to appear before the learned Magistrate and seek bail. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits, in accordance with law and expeditiously. The petitioner has a case that the proceedings have been initiated against him vexatiously and as a counter blast for the proceedings initiated by him against the police officials. I need only mention that the petitioner shall be at liberty to urge all his contentions. The learned Magistrate must consider such application for bail on merits, expeditiously and in accordance with law. It is not

necessary to repeat that the mere fact that the offence triable by a Court of Session will not justify abdication of jurisdiction under Section 457 Cr.P.C by the learned Magistrate. He must consider the application on merits, in accordance with law and expeditiously.

3. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

4. Hand over a copy of this order to the learned counsel for the petitioner.

**(R.BASANT, JUDGE)**

rtr/-